IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 708 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PALBHAI PARMANAND SHAH

Appearance:

MS KATHABEN GAJJAR LD. ADDL. PUBLIC PROSECUTOR for the Appellant

MR MB BUCH L.A. for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision:24/03/2000

C.A.V. JUDGEMENT

#. This is an appeal preferred by the State of Gujarat under Section 378(1) of the Criminal Procedure Code, 1973 (Cr.P.C. in short) challenging an order of acquittal dated 5-6-1991 passed by the learned Judicial Magistrate

First Class, Modasa, by rendering a judgment Exh. 56 in Criminal Case No. 275 of 1985 which was pending on his file.

The respondent in this Appeal was an accused in Criminal Case No. 275 of 1985. That Criminal Case was lodged on the basis of private complaint of Food Inspector Shri S.S. Yagnik and therefore for the purpose of convenience, parties will be referred to as the Food Inspector and accused hereafter.

#. The facts leading to this appeal in a nut-shell are as follows:-

The original complainant Shri S.S.Yagnik was a Food Inspector appointed for the local area of Gujarat State. As per his complaint dated 15-3-1985, he in his capacity as Food Inspector visited the shop of accused at about 4.00 p.m. on 10-7-1984. It is the case of the prosecution that accused is running a grocery shop in name and style of M/s. Shripal Brothers just opposite to Nagrik Bank in Modasa town. Accused is dealing in business of grains, cereals, edible oils, spices etc. The Food Inspector in presence of panch witness purchased a sample of turmeric powder weighing 600 gms for the purpose of analysis from accused who was present in the shop. The Food Inspector took that sample of turmeric powder in accordance with the provisions of the Prevention of Food Adulteration Act, 1954 (the Act in short) read with the Prevention of Food Adulteration Rules, 1955 (the Rules in short). One of such samples of turmeric powder was sent to the Public Analyst at Baroda. The Public Analyst analysed that sample and issued a report of analysis whereby it was declared by the Public Analyst that the sample was adulterated as defined under Section 2(i-a) of the Act. Thereafter, after seeking a written consent under Section 20 of the Act, the Food Inspector lodged a complaint for contravention of Section 7(i) read with Section 7(v) which is punishable under Section 16(1)(a) of the Act.

The accused appeared before the trial Court through his advocate. The learned Magistrate after following the procedure laid down in the Cr.P.C. tried the case against the accused and after appreciating the evidence led by the prosecution and after hearing both the parties delivered a judgment on 5-6-1991 and acquitted the accused by his judgment Exh. 56, which is challenged in this appeal.

The Food Inspector has not preferred any appeal

against an order of acquittal by seeking permission of this Court under Section 378(4) of Cr.P.C. This is an appeal preferred by the State of Gujarat under Section 378(1) as stated above.

#. I have heard Ms. Kathaben Gajjar, the learned APP for the appellant and Shri M.B. Buch, the learned advocate for the respondent-accused in detail at length. The ld. APP has taken me through the evidence by reading depositions and the judgment of the trial court.

#. Before considering the submissions of learned APP for the State, it would be desirable to note that the scope of High Court in dealing with such type of orders of acquittals is somewhat limited.

#. In Ramesh Babulal Doshi v. State of Gujarat 1996(2) GLH 206, the Hon'ble Supreme Court has been pleased to give certain guidelines to the Appeal Courts dealing with Criminal Appeals. As per this authority, it is now a well settled legal position that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appeal court on reappraisal of the evidence, cannot constitute an authority and sufficient ground to interfere with the order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appeal court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous, or demonstrably unsustainable. If the appeal court answers the above question in the negative the order of the acquittal is not to be disturbed.

#. Keeping in mind the above legal position now I will deal with the submissions made by the learned APP for the appellant.

During the course of arguments, learned APP for the appellant has submitted that the learned Magistrate has accepted the case of the prosecution on all the points except following two points:

(1) The learned Magistrate has come to a conclusion that a report of Public Analyst has not been received by the accused under Section 13(2) Cr.P.C. and therefore the accused has been deprived of his statutory right to request the

Court to send another sample of turmeric powder to the Central Food Laboratory for challenging the report of the Public Analyst. This fact weighed with the Magistrate and learned Magistrate acquitted the accused on that point.

(2) The learned Magistrate has come to the conclusion that written consent under Section 20 of the Act is not a legal and valid consent and on that count the learned Magistrate has acquitted the accused.

#. The learned APP has further argued that the learned Magistrate has erred in holding that the accused has not received a copy of report of Public Analyst which is required to be sent by Food Inspector under Section 13(2) of the Act to the accused. She has further argued that as per evidence, the copy of the report of the Public Analyst is already received by the accused but he failed to exercise his right to apply to the learned Magistrate for sending the sample to the Central Food Laboratory.

#. As this appeal is challenged only on aforesaid two points no other evidence is discussed and dealt with by this Court as the case of the prosecution is proved on all the points except the aforesaid two points and therefore the above two points are discussed and dealt with by this Court.

#. As per the evidence of the Food Inspector on receipt of the report of the Public Analyst he sent that report under his letter Exh. 43 to the Local Health Authority and in turn the Local Health Authority, as alleged by the prosecution, sent a copy of the report of Public Analyst to the accused under covering letter Exh. 46 on 26-3-1985. It is the case of the prosecution that said letter Exh. 46 with which a copy of report of Public Analyst was sent, was forwarded by registered post A.D. As per the case of the prosecution, original of letter Exh. 46 was received by accused on 29-3-1985. This postal A.D. receipt Exh. 47 is purported to have been signed by one "Parmanand". After completion of recording of evidence by the prosecution a further statement u/s. 313 Cr.P.C. of the accused was recorded. It may be noted that a specific question was asked to accused as to what he wanted to say for notice given by Local Health Authority for getting the sample analysed and in reply to that question, the accused has said that he has not received a notice for getting analysed the sample. Thus accused has denied for he having received the said notice Exh. 46 and indirectly he has denied signature on postal

A.D. receipt Exh. 47. It may be noted that learned Magistrate did not show Exh. 47 to the accused and seek an explanation for signature below it.

##. In the case before hand, the prosecution examined Food Inspector at Exh. 14 and during the course of his examination-in-chief, office copy of letter i.e. exh. 46 was tendered in evidence. He also tendered postal A.D. receipt Exh. 47. The complainant has not deposed in terms that the letter Exh. 46 has been received by the accused. He has not deposed that postal A.D. receipt Exh. 47 bears signature of accused. He merely tendered these two documents Exh. 46 and 47 in his examination-in-chief. In cross-examination of the Food Inspector accused challenged postal A.D. receipt Exh. 47. It appears from the tenor of language in reply to question put by the learned advocate for the accused before the trial court a question was put to him as to whether Exh. 47 was bearing the signature of accused and in reply to that question the Food Inspector has admitted in unequivocal terms that Exh. 47 did not bear signature of accused, and therefore Food Inspector himself admits that Exh. 46 is not received by the accused, particularly when Exh. 47 is not bearing the signature of accused. If this was the answer given by the Food Inspector in his cross-examination then prosecution ought to have examined the postman who served that letter Exh. 46 sent by Regd. post A.D.

##. It may be noted that name of accused is Shri Shripal Parmanand Shah and therefore name of father is Parmanand. It is not in evidence that Exh. 47 is signed by father of accused. It is quite possible that someone might have signed Exh. 47 by writing "Parmanand", and therefore it cannot be imagined that signature on Exh. 47 is the signature of father of accused. The prosecution could have examined the father of the accused to prove the signature on Exh. 47. In absence of evidence, no inference can be drawn that Exh. 47 bears the signature of father of accused. For a moment if it is believed that signature on Exh. 47 is of father of accused, then it cannot further be inferred that accused has received letter Exh. 46.

##. As per sub-section (2) of Section 13 of the Act on receipt of report from the Public Analyst a copy of the report of the result of the analysis is required to be sent to accused and accused is required to be informed that if it is so desired he may make an application to the court within a period of ten days from the date of receipt of the copy of the report of the Public Analyst

to get the sample of the article of food kept by Local Health Authority analysed by the Central Food Laboratory and therefore it is a mandatory duty of the Local Health Authority to furnish a copy of the report of the Public Analyst to accused and when Food Inspector has admitted that Exh. 47 is not bearing signature of accused then this fact is required to be proved by leading cogent evidence that Local Health Authority forwarded a copy of the report of Public Analyst to the accused. Prosecution has produced an office copy of letter Exh. 46 of the Local Health Authority under which copy of the report of the Public Analyst was sent to the accused. In letter Exh. 46 it is stated that a copy of the report dated 19-8-1984 of the Public Analyst was sent along with that letter. The prosecution has not produced a white postal receipt to show that on particular date letter Exh. 46 was sent by R.P.A.D. The prosecution has produced only R.P.A.D. receipt Exh. 47 to show that letter Exh. 46 was sent to accused at the address given by the accused. The crux of the case is as to whether accused did receive letter Exh. 46 and if yes then it can be said that provisions of Section 13(2) of the Act are complied with and if not, then it can be said that accused has not received copy of report of Public Analyst and thereby he has been deprived of his right to get the sample analysed by the Central Food Laboratory. When the Food Inspector himself has deposed in his evidence that Exh. 47 does not bear the signature of accused then it can be said that letter Exh. 46 is not received by the accused.

##. Learned APP has vehemently argued that this court should believe that letter Exh. 46 has been received by the accused, and that provisions of Section 13(2) are fully complied with by the prosecution.

##. This court has come across one unreported judgment of this Court rendered in Criminal Appeal No. 113 of 1979 (Coram : N.H.Bhatt, J). In that case the postal acknowledgment purported to bear the signature of Govindbhai Sivabhai Patel for and on behalf of accused. But the accused stated that there was no such man Govindbhai Sivabhai Patel who would act on his behalf. In that case accused had asserted that he was not served with the copy of the report of Public Analyst and that assertion was accepted by the learned Magistrate. In appeal before this Court, this Court accepted that particular defence and ultimately confirmed the judgment of the acquittal by dismissing the appeal.

##. This Court has also come across one case of unreported judgment dated 8-12-1988 of this Court (Coram

: D.C. Gheewala, J) rendered in Criminal Appeal No. 204 of 1979. In that case a case reported in 15 GLR 655 has been referred to. On relying principles laid down in that Full Bench decision reported in 15 GLR 685, this Court in Criminal Appeal No. 204 of 1979 has held that in case where the postal envelope sent by registered post is received back by the sender with an endorsement of refusal, presumption can arise that it was so presented to the addressee and he refused to accept the same, and in such circumstances knowledge can be imputed to him of the contents of the envelope. In that case the envelope and the A.D. slip bore the name of the respondent as also his correct address. The A.D. slip produced in that case Exh. 9 however did not bear the signature of the respondent but it was bearing the signature of one Ganpat Atabhai. This Court held that no such presumption can be raised that Ganpatbhai Atabhai is the brother of the respondent accused or that he was an authorised agent of the respondent accused to receive the said envelope. It was further held that in cases where the addressee refused to accept the envelope tendered to him a presumption can be raised that he received the letter. But in case where from the evidence produced by the prosecution itself it becomes clear that respondent was neither tendered that envelope nor he signed A.D. slip in view of receiving the same nor he had received the same but somebody else had received the same no such presumption can be raised. On the contrary if there was any such presumption which could have been raised under Section 114 of the Indian Evidence Act that presumption stands amply rebutted by the documentary evidence produced by the prosecution itself and in that view of the matter this court dismissed the appeal preferred by the State Government.

##. Here also in this case, it is not proved that person who signed as "Parmanand" was father of the accused and it does not further prove that father of accused was authorised to receive letter Exh.46 and further that letter Exh.46 has been received by the accused.

Under the circumstances when the Food Inspector himself has admitted that postal A.D. receipt Exh. 47 does not bear the signature of accused, then, it is clearly proved that accused has not received letter Exh. 46 and if it is not received by the accused, then it can be said that accused is denied for exercising his right to get the sample analysed by the Central Food Laboratory.

##. Shri M.B. Buch, learned advocate for the respondent

has cited an authority of Rameshwar Dayal v. State of U.P. reported in 1996(2) P.F.A Cases (SC) 119. In that case it appeared that the report of Public Analyst was not supplied to the accused as required under Section 13(2) of the Act and consequently he could not get his own sample examined by the Central Food Laboratory and in view of that facts the Hon'ble Supreme Court has held that it is a very valuable right given to him and rules also provide that such a report should be supplied to the accused within certain period and that serious prejudice has been caused to the appellant because of non supply of report of the Public Analyst as required under Section 13(2) of the Act.

##. In view of the above legal position the prosecution is expected to strictly prove that provisions of Section 13(2) of the Act are fully complied with. Here in this case when it is not proved that accused has not received a copy of the report of the Public Analyst which is compulsorily required to be sent by Local Health Authority within a stipulated time, then certainly right of accused is defeated and a defence of accused is seriously damaged as he could not exercise his option to get the sample analysed by the Central Food Laboratory and therefore considering all these aspects and bearing in mind the evidence on record the learned Magistrate has rightly come to the conclusion that accused has been prejudiced by not sending to him a report of Public Analyst as required to be sent under Section 13(2) of the Act.

#. The second point which weighed with the Magistrate for acquitting the accused is with regard to written consent under Section 20 of the Act. The learned Magistrate has observed that written consent Exh. 44 is given without assigning reasons. The learned Magistrate has observed in his judgment that Local Health Authority who accorded his consent has not stated the reasons and does not mention in that written consent that launching of the prosecution was in the public interest. He has come to this conclusion on relying a judgment of the Bombay High Court rendered in Criminal Revision Application No. 461 of 1985 dated 6-2-1987. Shri M.B. Buch learned advocate for the respondent has fairly conceded that he has not seriously pressed this point No.2 in view of the latest decision of this Court.

##. Learned A.P.P. has cited an authority of Harshvadan Dayalal Sevak, Food Inspector v. Nareshbhai Devangdas Waghva, 1991(2) GLH 650. In this cited case Division Bench of this Court has made it clear that written

consent under Section 20 of the Act given without recording the reasons for the same is not rendered invalid, nor the want of reasons will invite any adverse effect. This Court also held that looking to the object of the Act, Act is for the public interest and therefore consent to prosecute adulterator of the food article would obviously be in the public interest and therefore the second point on which the learned Magistrate acquitted the accused is not properly concluded by the learned Magistrate. On that score only accused cannot be acquitted.

##. In view of the discussion made hereinabove, the first point with regard to nonreceipt of the report of the Public Analyst is legally answered by the Magistrate and the learned Magistrate has correctly come to the conclusion that accused has been denied to exercise his valuable right of getting the sample analysed by the Central Food Laboratory and therefore the defence of the accused is seriously prejudiced and therefore on that score accused is acquitted. It cannot be said that the judgment is erroneous or wrong on that point considering the legal position discussed hereinabove.

In view of the discussion made hereinabove, this Court is of the view that there is no other circumstance to come to a different conclusion to disturb the finding of the lower court and therefore considering all the aspects discussed hereinabove, this appeal deserves to be dismissed and accordingly this appeal is dismissed by confirming the judgment dated 5-6-1991 rendered in Criminal Case No. 272 of 1985 by the J.M.F.C., Modasa.

(H.H. Mehta, J)